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at lightning speed in a badly ventilated room, is likely to regard a bar examination as an unfair test. Where there is but one law school in question, there certainly seems to be no serious objection to accepting its degree as evidence of the student's knowledge of common law, at least, if not of the statutes and practice. Where, on the other hand, the privilege is bestowed on two or more law schools, objections may arise from the inequality of standard, the strivings of the several faculties to enlarge their roll of students, and the ineffectiveness of the distant supervision exercised by the Bar. However, even under these circumstances, the question is worth discussing.

JUDICIAL CHECK ON UNCONSTITUTIONAL LEGISLATION. — The exercise by the courts of this country of the power to declare acts of a co-ordinate legislature void because of unconstitutionality has become so much of a commonplace, that the peculiar circumstances which led to the establishment of the power are likely to be forgotten : and one is apt to think of this power of the judiciary as inherent in the nature of our government, and as such, accepted from the outset without dispute. The able and serious opposition which met the claim of this power in some of the original States is too frequently overlooked. As late as 1825, Gibson, J., of the Pennsylvania Supreme Bench, in *Eakin* v. *Raub* (12 S. & R. 330), vigorously denied the existence of the right claimed by the courts to disregard a legislative act because of its conflict with provisions of the State Constitution. A re-examination of the source of this power is demanded, when one finds it laid down as a principle established beyond dispute, that under a written Constitution the right of the judiciary to declare legislative enactments void for unconstitutionality is " the necessary logic of jurisprudence. "

This is, in effect, the statement made by Prof. J. W. Burrage in a recent number of the Political Science Quarterly (September, 1895, Vol. X. pp. 422, 423).

That under the State and Federal Constitutions the American courts exercise this power rightfully, is settled beyond cavil. Yet it is not expressly granted in the Constitutions of the original States : nor is it clear, as Prof. Burrage would seem to assert, that it is expressly granted in the Federal Constitution. Nevertheless, one is not driven to defend the power as the "necessary logic of jurisprudence." Its existence is to be traced rather to the relations of the English courts to our colonial legislatures prior to the Revolution, to the effect of those relations on the conception of the powers of State judiciaries, and less remotely to the intentions of the framers of our early constitutions, than to a logical deduction from the mere existence of a written constitution. (See Thayer's Origin and Scope of the American Doctrine of Constitutional Law, 7 HARVARD LAW REVIEW, 129.)

Gibson, J., in the case of *Eakin* v. *Raub*, above referred to, points out that the powers of the judiciary fall into two classes, political and civil. The civil powers are the ordinary powers of the courts at common law, while the power by which any control or influence is exerted over other departments of government or their acts is a political power. At common law, the judiciary can possess no political power. Yet it is claimed that, by necessary implication, the existence of a written constitution confers upon the judiciary, in addition to its ordinary and

appropriate powers, the power to pass upon the constitutionality of legislative acts, that is, a power distinctly political. The burden of proof is obviously on those who make this assertion. The main argument in support of the claim is this: the Constitution is the supreme law of the land; it is the peculiar function of the judiciary to interpret the law; therefore, in case of a conflict between the supreme law and a law passed by the legislature, the latter must be declared void. It is of course essential to the cognizance and decision of such a conflict that the judiciary have the right to interpret the Constitution; but to say that the Constitution is the supreme law is not necessarily to say that it is law which the judiciary may interpret. What is really meant by the phrase, the Constitution is the supreme law, is that the Constitution is a set of rules binding on the several departments of government. Can it be said to follow that one department has the power to declare the meaning of the rules addressed to the other departments? Each department, according to the natural implication, should look to those rules addressed to itself, and determine their meaning. Because these rules are not binding if not enforced, is no reason that one department should deduce the power to enforce upon another department its interpretation of rules not addressed to itself. Rather it would seem to follow that the people who have formulated these rules, and have not expressly delegated the power to interpret and to enforce them, have reserved that power to themselves, in case the departments overstep their constitutional limits.

This view of the Constitution, that each department has a right to interpret those rules addressed to itself, and demand acquiescence in the interpretation from the other departments, is, it is true, a conception of the Constitution as directory rather than as mandatory and unyielding. Yet to-day, with the power of the judiciary in this country to declare acts of the legislature unconstitutional and void firmly established, much of the Constitution remains to all purposes directory. Many violations of its rules on the part of the legislature are not open to judicial cognizance. Two classes of violations are sufficient examples: one, a refusal to legislate though required to do so by the Constitution; the other, the enactment and enforcement of laws which, though plainly inconsistent with constitutional provisions, have not been brought up in judicial form for the consideration of the courts, and which therefore, in spite of obvious unconstitutionality, may be operative and binding on the people for years. The check on unconstitutional legislation exercised by our courts is one of the weakest and most remote in our scheme of government.

Those who assert that it will lead to utter confusion to allow the various departments to define the limits of their respective powers overlook the relative unimportance of the judicial check in comparison with other checks provided for in written Constitutions: the restraining influence of public sentiment; and above all the actual experience of those countries whose legislation is free from judicial check. The constitutions of France and Switzerland expressly declare that the courts shall be bound by all the acts of the legislature. It may be true, as Prof. Burrage says, that illustrious European jurists and publicists are urging that the power of declaring legislative acts void for unconstitutionality be exercised by the Continental courts: yet as a matter of fact the German courts, free from the influence of precedents peculiar in

our colonial system, and having to deal with this alleged power solely as a supposed necessary deduction from the existence of a written constitution, have finally decided that the power does not exist. The Imperial Tribunal in the case of *K.* v. *The Dyke Board of Niedervieland* (cited in Coxe, Judicial Power and Unconstitutional Legislation, p. 99) held that a "constitutional provision that well acquired rights must not be injured is to be understood only as a rule for the legislative power itself to interpret, and does not signify that a command given by the legislative power should be left disregarded by the judge because it injures well acquired rights."

It is not to be questioned that the judicial check on unconstitutional legislation is beneficial; that it is a more convenient and stricter check than that the people directly exercise But it is, at the same time, to be remembered that the right to exercise this check is not to be deduced from the existence of a written constitution. The grave practical results of the decision of the German courts on this point show clearly that the question is not one of merely academic interest.

TACKING OF ADVERSE POSSESSIONS. — In most jurisdictions privity of estate is regarded as essential to the tacking of adverse possessions. In view of the fact that it is a question primarily of barring the owner's right of entry, and not of bestowing title upon the last adverse possessor, the word privity has often been interpreted rather liberally. For example, in *Davock* v. *Nealon* (32 Atl. Rep. 675), the New Jersey court recently held that where one encloses and occupies more land than is covered by the description in his deed and sells (by the same description) to another, who enters into possession of all the land enclosed, the successive possessions may be tacked to make up the period required by the Statute of Limitations. As to the land not included in the deed, the court held that the clear intention of the parties, coupled with the actual transfer of possession, raised the required privity. The same result was reached in *McNeely* v. *Langan* (22 Ohio St. 32), while the opposite view was taken by the Massachusetts court in *Ward* v. *Bartholomew* (6 Pick. 409). Each case has a considerable following.

Notwithstanding some rather cautious statements in the opinion, it may probably now be taken as settled in New Jersey, that any voluntary transfer of possession will suffice to sanction tacking. This seems the better view. Whether or not one to whom an absolutely void conveyance has been made, and whose possession is consequently adverse to his grantor, can be said to stand in privity of title with the latter, may be only a question of words, and at any rate it is a difficulty for the New Jersey court to deal with. One who looks at the matter purely in the light of principle may well throw overboard the whole doctrine of privity, and conclude, as at least one American court has done, (see *Fanning* v. *Willcox*, 3 Day, 258,) that there is no logical stopping place short of holding that even successive disseisins are no break in the continuity of adverse possession, and that accordingly a disseisor, as well as a grantee, an heir, or a devisee, must be allowed the privilege of tacking For it certainly seems in accord with the reason of the Statute of Limitations to look at the whole matter solely from the point of view of him whose right is to be barred. If he is kept out of posses-